



## Employee Plans

Internal Revenue Service  
Employee Plans Overview  
Los Angeles Benefits Conference  
Los Angeles  
January 29, 2004



# Mission Statement

- The mission of the Tax Exempt and Government Entities Division is to provide our customers top quality service by helping them understand and comply with applicable tax laws and to protect the public interest by applying the tax law with integrity and fairness to all



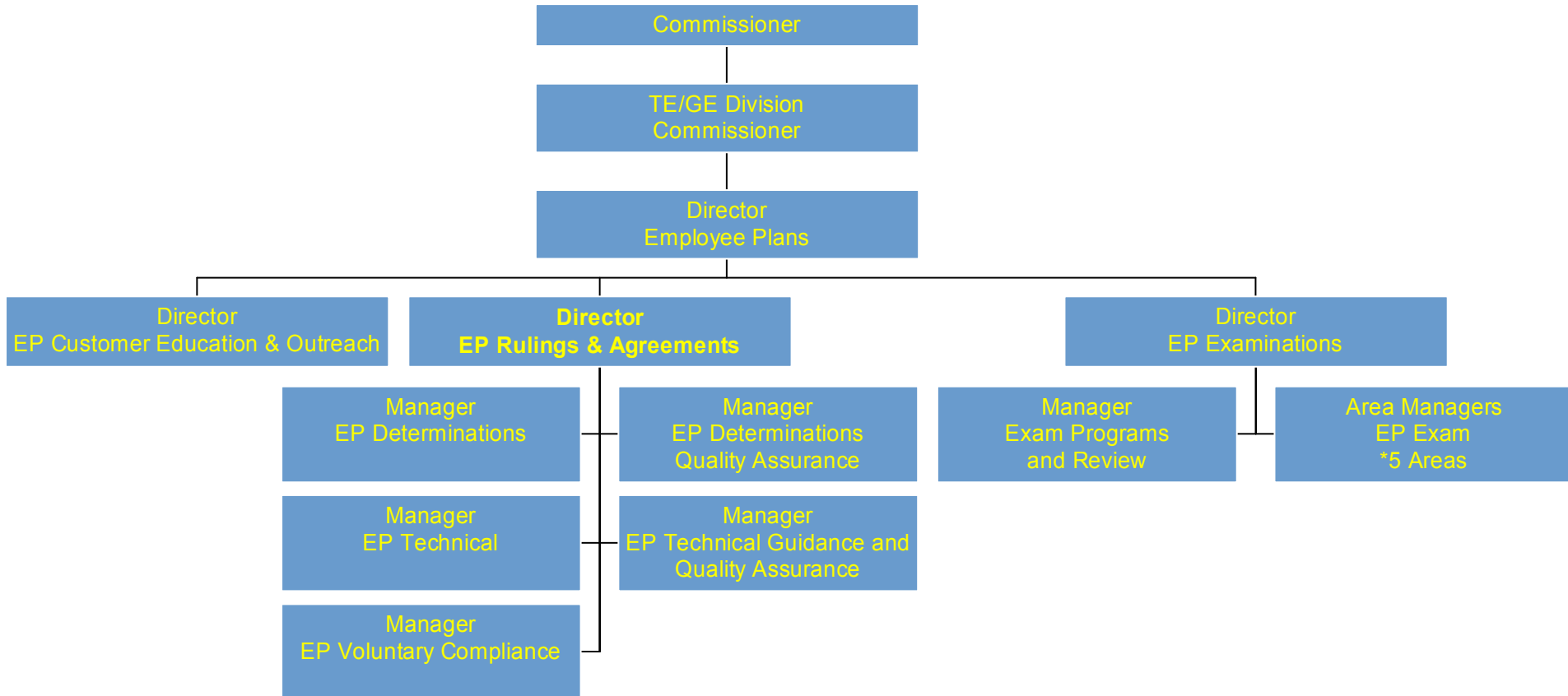
# Three Key Categories

- Rulings and Agreements – or assurance
- Customer Education & Outreach –  
or communication
- Examinations – or compliance





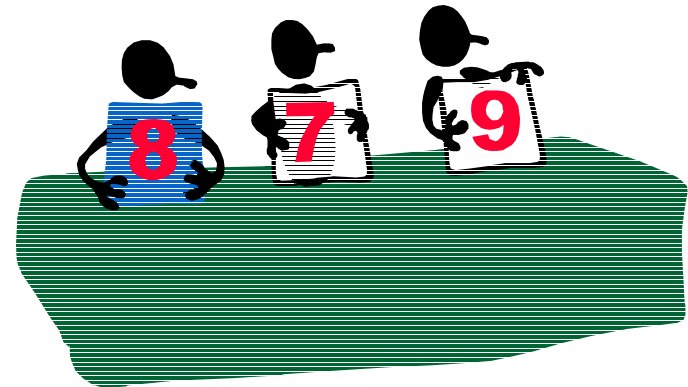
# Employee Plans Organization, Within TE/GE





# How are we doing?

- Customers very satisfied
- Satisfaction level has grown
- Current satisfaction rates
  - 69% for determinations
  - 71% for examinations





# Issues to Address

- Length of:
  - Examinations
  - Determinations
- Explanations of various issues
  - Taxpayer rights
  - Adjustments and amendments



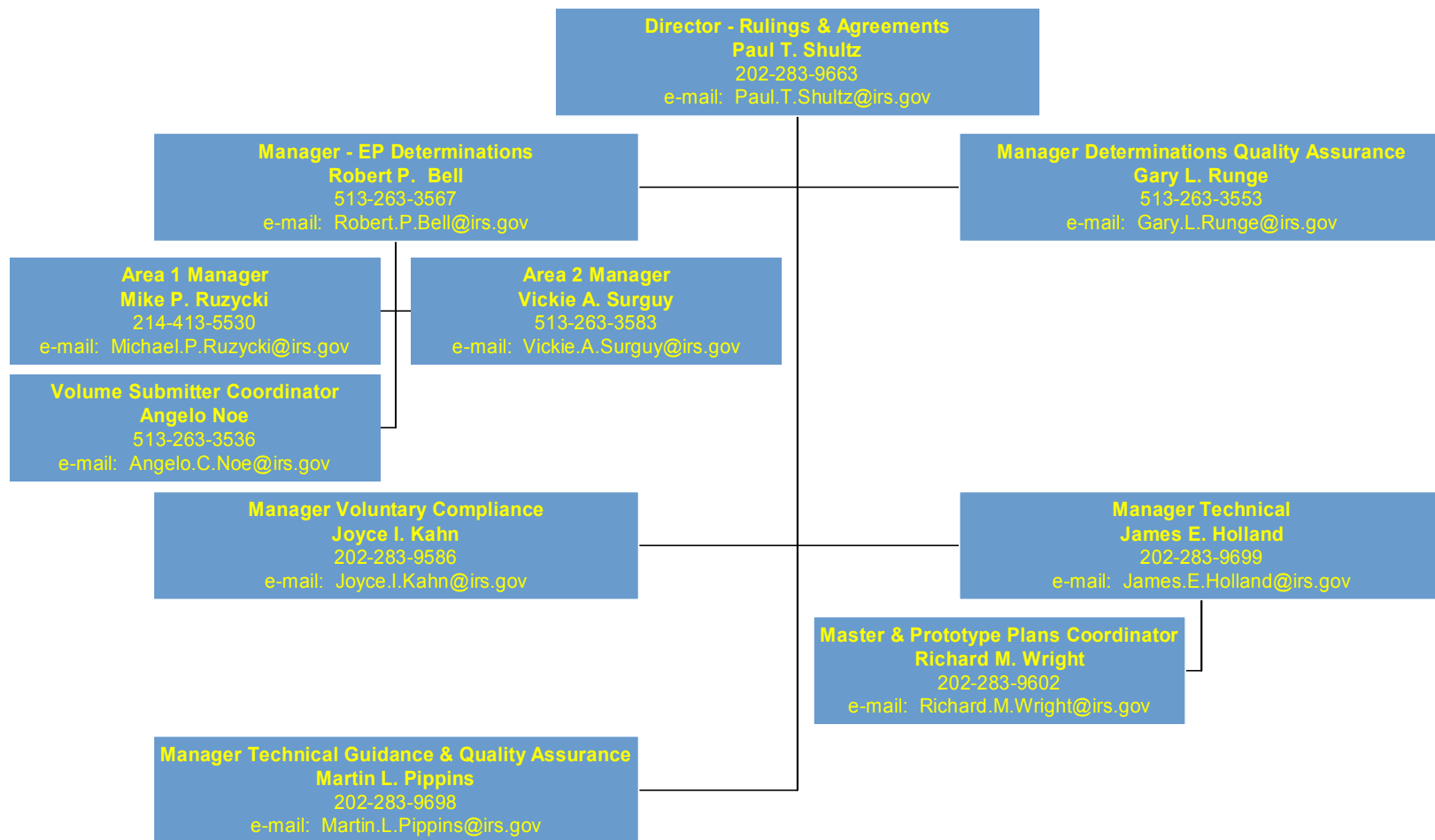


# Rulings & Agreements

- Major focus: Determination letter applications for GUST
- Streamlined current determination process
- Plan for future determination process, including EGTRRA submissions
- Ramp up Voluntary Compliance unit
- Address abusive tax shelters using plans
- Administer minimum funding rules for DBs



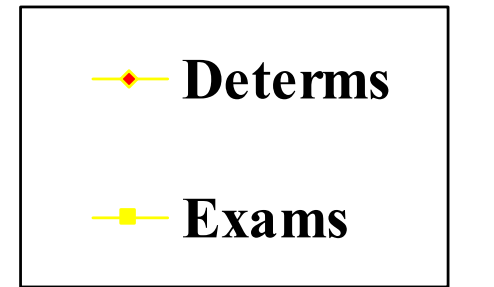
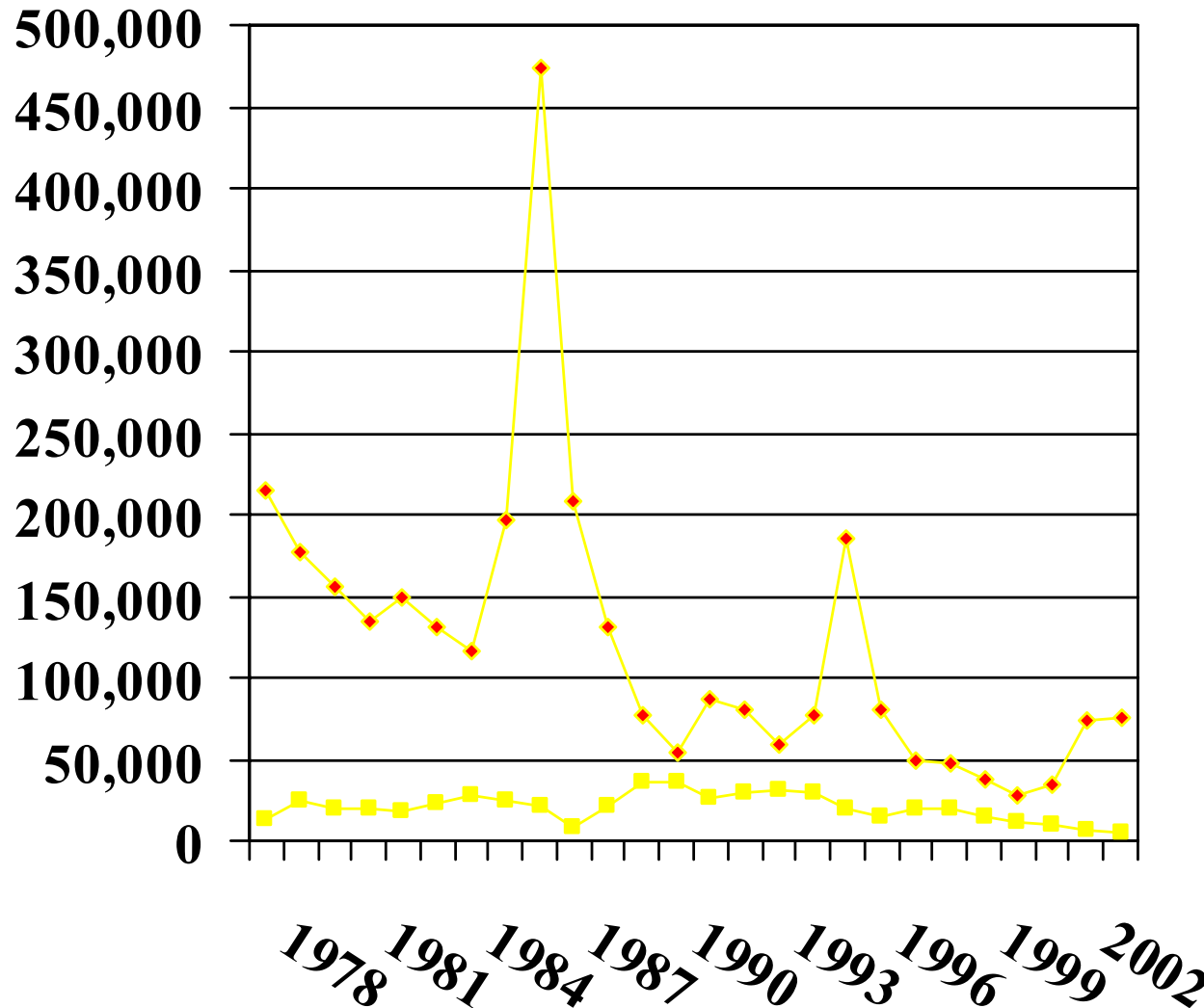
# EP – Rulings and Agreements







# Determinations and Examinations “at a Glance”



- 1978 ERISA Final Regulations
- 1986 TDR
- 1994 TRA '86
- 2002-03 GUST



# Receipts for FY 2002

Forms 5300/5303	40,000
Forms 5307/6406	25,000
Form 5310	8,000
Total:	73,000



# Receipts for FY2003

Forms 5300/5303	7,200
Forms 5307/6406	59,800*
Form 5310	7,000
Total for fiscal year:	74,000

\* More coming up to 1/31/04



# Projected Receipts for FY2004

Forms 5300/5303	8,000
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Forms 5307/6406	37,000
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Form 5310	7,000
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Total for fiscal year:	52,000
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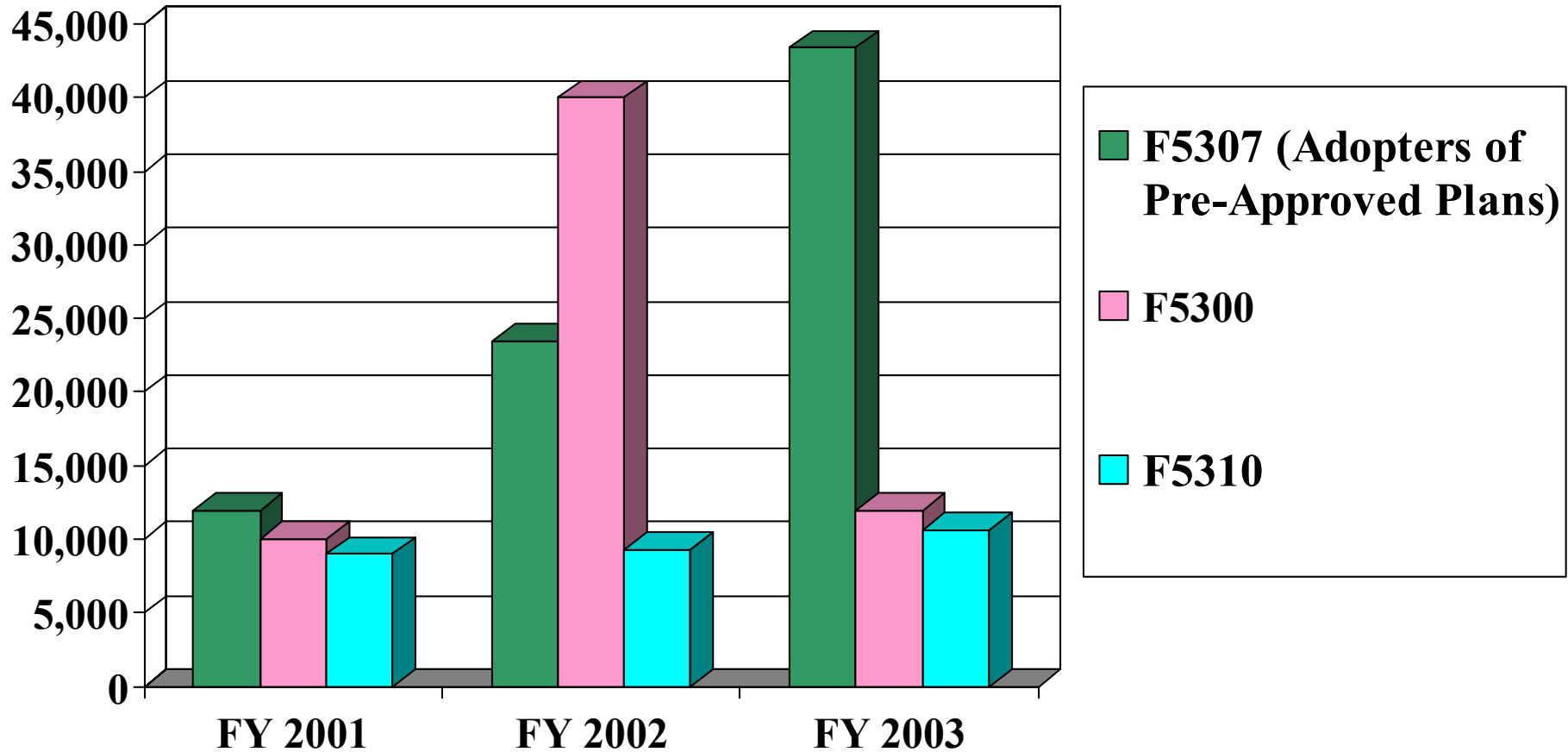


# Rulings & Agreements -- Determination Letter Program

- GUST RAP -- Fourth since ERISA
  - Total Applications Expected over FYs 2002 & 2003
    - Expected 275K (Normal year 30K)
    - Now 150K
  - IDPs (on 5300)
    - Expected 100K
    - Now 50K
    - So far 47K
  - Pre-approved Plans
    - Expected 175K
    - Now 90K+?
    - So far 85K



# “GUST” Actual Receipts





# Rulings & Agreements -- Determination Letter Program

- Why fewer applications?
  - IDPs:
    - Migration to pre-approved plans
  - Pre-approved plans:
    - Optional filing for word for word adopters



# Rulings & Agreements -- Determination Letter Program

- What EP has done to ease the job of filing applications?
  - Extensions of Remedial Amendment Periods
  - Filing for adopters of identical pre-approved plans optional
  - Nondiscrimination testing optional
  - Soft guidance (in newsletter and on website)
  - Qs & As on website
  - Screening process
  - Guidance on late filers/non-amenders
  - New forms





# Rulings & Agreements -- Determination Letter Program

- Extension of Remedial Amendment Period for Pre-Approved Plans
  - RAP is later of 9/30/03 or end of 12-month period from last letter received by sponsor of plan
  - RAP *for filing only* extended to 1/31/04; still must amend or adopt by 9/30 (or 12-month rule date)
  - If miss adoption deadline, may file by 1/31/04 and pay \$250 compliance fee, and RAP extended to 91 days after receipt of letter
  - Extension applies for DC 401(a)(9) required amendments as well
  - If miss 1/31/04 deadline, must use EPCRS



# Rulings & Agreements -- Determination Letter Program

- What's coming up from here?
  - Combination of M&P and VS programs?
  - Non-EGTRRA substantive amendments get EGTRRA RAP?
  - Pre-approved plan effective date changes hurt identical adopter status?
  - Model plan documents?
  - Operating manuals? SEP/SIMPLE; 403(b); 401(k)



# IRS Pre-Approved Plans (Listed at [www.irs.gov/ep](http://www.irs.gov/ep))

## **Master & Prototype Specimens**

- 200 sponsors submitted plans by 12/31/00 for GUST
- 1,000 plans total
- Reviewed in Washington D. C.
- Projected adopting employers seeking a determination letter – 40,000
- Number of adopting employers: More than one half million (primarily standardized plans)

## **Volume Submitter Plans**

- 350 sponsors submitted plans by 12/31/00 for GUST
- 1,100 plans total
- Reviewed in Cincinnati and the areas
- Projected adopting employers seeking a determination letter – 50,000 (v. 140,000 orig.)



# Staffing for FY 2001 -- 2003

## **FY 2001**

- 150 Agents Total
  - 50 Agents in Cincinnati
    - (35 doing technical screening)
  - 100 Agents working determinations in their respective geographic locations

## **FY 2002 & 2003**

- 290 Agents Total
  - 60 Agents in Cincinnati
    - (35 doing technical screening)
  - 230 Agents working determinations in their respective geographic locations
    - (75 doing technical screening)



# Staffing for FY 2004

- 155 Agents Total -- All part of Determinations
  - 60 Agents in Cincinnati
    - (some doing technical screening)
  - 95 Agents working determinations in their respective geographic locations
    - (some doing technical screening)



# Rulings & Agreements -- Determination Letter Program

- Why not file and move cases electronically?
  - Major systems redesign
  - Releases over next few years
  - Start with 5307 in 2003
  - Capture data, maintain electronic file of plan and application that would be available for assignment, review and status updates
  - Eventually, self-service checking on status and filing of application



# Future of the Determination Letter Program

- White Paper in 2001 -- 8 Options:
  - Maintain status quo?
  - Eliminate DLs?
  - Eliminate DLs for individually designed plans?
  - Third-party certification?
  - Self-certification?
  - Annual registration?
  - DLs only on adoption and termination?
  - Staggered approach?
  - Amend after legislation and again after guidance?





# Future of the Determination Letter Program

- Second White Paper January 2003
  - Status Quo
  - Staggered Expiration of RAPs







# Future of the Determination Letter Program

- Comments on Second White Paper
  - IDP Practitioners favor staggered approach
  - M&P sponsors favor status quo
- Bifurcated approach?
  - ID plans on staggered approach
  - M&P and Volume Submitter sponsors on loose 6-year program -- DBs come in in year one and DCs in year 3.
  - Impact of merger of M&P and VS programs?



# Future of the Determination Letter Program



## ➤ Next Steps:

- General notice
- Proposed regulations under 401(b)
- Draft revenue procedure describing revised program for comment
- Draft revenue procedure describing merged M&P and VS programs



# Contact Information

Share your views with us.

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E-mail is the preferred method of contact.

Technical Questions? Call our  
Customer Account Services on  
1-877-829-5500; phone preferred.

Guidance & General Information is  
available at [www.irs.gov/ep](http://www.irs.gov/ep)





# Recent Guidance and Current Projects



## ➤ Recent Guidance

### – Cash Balance Plans

- Age discrimination proposed regulations
  - Traditional defined benefit plans
  - New cash balance plans
  - Converted cash balance plans
  - Pension equity plans
  - Benefits & contributions nondiscrimination portion withdrawn
- Interest rates proposed regulations? -- Revision of Notice 96-8 theory
- Accrual rule problem (133 1/3% rule)
- Converted plans DL applications -- Ann. 2003-1
- Legislation?



# Recent Guidance and Current Projects (continued)



## ➤ Recent Guidance

- Final 417(a)(3) Relative Value Regulations
  - Result of Congressional interest
  - Require comparisons of lump sums and annuities
  - Intended to assure greater level of informed participation
  - E.D. pushed forward to 7/1/04.



# Recent Guidance and Current Projects (continued)



## ➤ Recent Guidance

### – IRAs and Deemed IRAs

- IRA rollover exception -- Rev. Proc. 2003-16
  - Extensions at discretion of IRS
  - Automatic where financial institution error
  - Development of internal guidelines under way
- Deemed IRAs under 408(q) --
  - Rev. Proc. 2003-13
  - Proposed regulations 1.408(q)-1; final 3<sup>rd</sup> quarter GY
  - Little use anticipated
  - Some interest among government plans



# Recent Guidance and Current Projects (continued)



## ➤ Recent Guidance

### – Shut-down benefits -- Notice 2003-10

- Historical position of IRS in GCM 39869
- Contrary views of some courts (*e.g.*, Bellas case)
- PBGC interests
- Review of historical position
- Potential major financial impact; benefits not funded
- Any change to be prospective with transition period



# Recent Guidance and Current Projects (continued)



## ➤ Recent Guidance

### – 204(h)/4980F Regulations (Final 4/1/03)

- 45 day – General rule
- Exceptions:
  - 15 day – Mergers and acquisitions, small plan amendments (including multi-employer plans)
  - 30 day – After effective date of M&A amendment affecting only early retirement benefits or retirement type subsidies
- Excise tax under 4980F as well as accrual precondition under 204(h)





# Recent Guidance and Current Projects (continued)



## ➤ Recent Guidance

- ESOP S Corp. Effective Date Issue -- Rev. Rul. 2003-6
  - EGTRRA tightened S corp. ESOP rules in 409(p)
  - Effective March 14, 2001
  - Exception for existing S corp. ESOPs, to 1/1/05
  - Shell corporations and shell ESOPs being marketed
  - Insubstantial benefits cause invalidity
  - Listed tax shelter requiring disclosures
- Guidance re adjustment of basis in Sub S stock under ESOP (RR 2003-27)



# Recent Guidance and Current Projects (continued)



## ➤ Recent Guidance

- ESOP S Corporation management company guidance -- Temporary 409(p) Regulations
  - Management establishes S corporation to provide management services
  - S corporation establishes ESOP and ESOP holds all S corporation shares; management sole beneficiaries
  - S corporation profits flow through to ESOP and escape tax
  - Management takes modest salaries from S corporation, balance in deferred compensation
  - Proposed regulations to shut down practice
  - Rationale: deferred compensation “synthetic equity”
  - Plan to list as tax shelter requiring disclosures



# Recent Guidance and Current Projects (continued)



## ➤ Recent Guidance

- Final and Proposed Minimum Distribution 401(a)(9) Regulations
  - Final regulations for defined contribution plans
  - Proposed regulations for defined benefit plans and annuities paid from DC plans and IRAs
  - Concern about impact of DB portion of regulations
  - Extension of time for compliance with regulations -- Notice 2003-2 and Rev. Proc. 2003-10
  - DB plan amendment postponed to end of EGTRRA remedial amendment period
  - Comply until then with 1987 or 2001 or 2002 regulations
  - Deemed to satisfy until guidance is issued



# Recent Guidance and Current Projects (continued)



## ➤ Recent Guidance

### – Notice on 419A(f)(5)

- Collectively-bargained exception to funded welfare plan rules of 419/419A
- Sham unions being marketed
- Intent to close down practice
- Listed as tax shelter requiring disclosures



# Recent Guidance and Current Projects (continued)



## ➤ Recent Guidance

### – EPCRS -- Rev. Proc. 2003-44

- Supersedes Rev. Proc. 2002-47
- Fixed fee schedule
- SIMPLE guidance
- Simplified Group Submission Procedure
- Relief available for EGTRRA non-amenders
- Clarifications for correction of spousal consent (QJSA) failures
- Website helps and new CD-ROM



# Recent Guidance and Current Projects (continued)

## ➤ Recent Guidance

### – 401(k) and (m) Proposed Regulations

- Consolidation of existing guidance
- Guidance on EGTRRA changes
- Addresses bottom-up leveling
- Eliminates mandatory dis-aggregation for ESOPs





# Recent Guidance and Current Projects (continued)



## ➤ Recent Guidance

- Catch-up contributions -- Final 414(v) Regs.
  - Universal availability requirement issue
    - Exception for collectively bargained plans
    - No exception for multi-employer plans
  - Prohibition on plan language re accelerated deductions



# Recent Guidance and Current Projects (continued)

## ➤ Recent Guidance

- Final 457 Regulations
  - Similar to proposed regulations
  - Examination Guidelines
    - Both pre and post EGTRRA law
    - By FY2004







# Recent Guidance and Current Projects (continued)



## ➤ Recent Guidance

### – Final 419A(f)(6) Regulations

- 10-or-more employer exception to funded welfare plan rules of 419/419A
- Define “experience rated”
- Few changes from proposed regs
- Listed as tax shelter requiring disclosures



# Recent Guidance and Current Projects (continued)



## ➤ Recent Guidance

- Proposed regs confirming position re DC plans under 411(d)(6)
- Final regs re retroactive annuity starting dates under 417(a)(7)
- Treatment of compensation for comp limit (RR 2003-11)
- Vesting service and resumption of accruals (RR 2003-65)



# Recent Guidance and Current Projects (continued)

## ➤ Recent Guidance

- Aggregate entry age normal method of funding prohibited (RR 2003-83)
- Relief from excise tax under 4980 (RR 2003-85)
- Statute of limitations for 4971 excise taxes started by filing of 5330, not 5500 (RR 2003-88)
- Mortality tables under 412(d)(7) -- request for comments -- Notice 2003-62





# Recent Guidance and Current Projects (continued)

## ➤ Current Projects

### – Proposed 403(b) Regulations

- No regulations since 1960's
- Consolidate guidance and capture learning
- Reflect legislative changes
- Update of Examination Guidelines
  - To reflect EGTRRA changes
  - By FY2004 (hoping . . .)





# Recent Guidance and Current Projects (continued)



## ➤ Current Projects

### – 412(i) Guidance

- Insured defined benefit plans meet funding requirements because insured
- Creative promoters market insurance with cash values that spring after distribution of policy following termination of plan
- Prior guidance -- Rev. Rul. 94-75 and Notice 89-25, Q & A-10
- Guidance to sort out good from bad practices
- May list as tax shelter requiring disclosures



# Recent Guidance and Current Projects (continued)



## ➤ Current Projects

- Proposed 411(d)(6) DB Exceptions Regulations
  - Notice 2002-46
    - 2001 regulations easing cut-back prohibitions for defined contribution plans
    - Consider doing same for defined benefit plans
    - Received comments from public
    - Proposed regs to be out soon



# Rulings & Agreements -- Voluntary Compliance Prog.

- “Stood up” over year ago -- 4 managers, 3 national coordinators, 30 employees across U.S.
- Coordinates closely with exams -- 5 area audit coordinators
- Transfer of cases from technical and other groups to VC
- VC Council; Coordination Committee
- New Rev. Proc. 2003-44





# R & A -- VC Program -- Miscellaneous Helps

- Added Appendix D -- sample formats for VCP submissions
- Provided tools on internet:
  - Red-lined version of rev proc
  - Table of changes (side by side)
  - Topical index
  - PowerPoint presentation on changes
- CD-Rom available (free!)
- Joint brochure with DOL & PBGC





# Rulings & Agreements -- Technical Groups in DC

- Re-engineering of Technical
- Rapid Rulings Program pilot project
- Focus group meeting on PLR program
- Internal focus group on technical advice work
- Best practices memo
- Emphasis on customer service





# Examinations



- Resources no longer constrained by Determination Letter load
- Special Emphasis Plan Projects:
  - IRC 403(b) & 457 Plans
  - IRC 401(k) Plans
  - Multiemployer Plans (MAP)
  - Large Plans (EPTA)



# Examinations -- Selection Process

## Risk Assessment:

- Refine case selection techniques
- Analyze plans in different industries
  - Type of plan
  - Levels of compliance





# Customer Education & Outreach

- Team of employees in six geographical areas across U.S.
- Support benefits conferences/speeches/outreach
- Employee Plans Newsletter
- Employee Plans Website
- Video: The Retirement Reports: Tax Sheltered Annuities and 457 Plans
- CD: Resource Guide for Tax-Sheltered Annuities and 457 Plans



# Where to Order

- [www.irs.gov/ep](http://www.irs.gov/ep)
  - Go to Educational Outreach Products
- Contact the IRS Forms Distribution Center at 1-800-829-3676
  - Select **option 2**, *Placing an Order for Forms & Publications*
  - For video when prompted, request **Publication 3767**





# ?? Questions ??

- Call: 1-877-829-5500
- Visit: EP Customer Account Services section of the Retirement Plans web page: [www.irs.gov/ep](http://www.irs.gov/ep) for email address -- be sure to leave phone number!

